

## **REMARKS**

Claims 35-51 were previously pending, with two claims 41. Claims 35 and 41-51 have been amended. Claims 41-51 were renumbered as claims 42-52. Claim 38 has been cancelled. No claims have been added. Claims 35-37 and 39-51 are now pending in the application. Favorable reconsideration and allowance are respectfully requested.

### **I. Formal Drawings**

It is requested in the Office Action that Applicant furnish formal drawings. Replacement drawing sheets 1-6 are submitted herewith, including Figs. 1-11. Applicant asserts that the formal drawings are submitted by way of the enclosed Replacement drawing sheets, thereby complying with the request outlined in the Office Action.

### **II. Claim Numbering**

The Office Action notes that the application, as previously pending, included two claims 41. The second claim 41 through claim 52 have been amended and renumbered as claims 42-52. Additional amendments were made for the purposes of proper claim dependency.

### **III. Claim Rejections Under 35 U.S.C. §112**

Claims 43-45, 47, and 50 are rejected under 35 U.S.C. §112, second paragraph. Applicant believes that claim 42 should also have been included in the group identified in the Office Action.

In particular, claims 42 and 43 are rejected because “at least one leg” is indefinite. Claims 42 and 43 have been amended to recite “at least one of said legs” which finds antecedent basis in independent claim 35.

Claim 44 is rejected because a reference to a “rail of the carrier system” is deemed indefinite. Applicant notes that claim 44 has also been amended to recite “at least one of said legs”. Applicant further notes that the reference to a rail of the carrier system is a claim element that pertains to the referenced “at least one of said legs”. For instance, claim 35 recites “legs for engaging a carrier system”. Claim 44 clarifies the claim 35 limitation, and recites that one of the legs is configured to engage a rail of the carrier system. Applicant asserts that this limitation is definite, as it (A) sets forth the subject matter that applicants

regard as the invention, and (B) particularly points out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant. MPEP §2171.

Claim 45 is rejected for being allegedly unclear whether the relationship of “another container” is the same or merely arbitrary “containers”. Applicant notes that the limitation “another carrier” is separate from the term “carrier” and thus is not confused with “carrier” when the claim is properly read and interpreted. Moreover, while Applicant does not ascribe the same limitations to “another carrier” that are ascribed to the previously claimed “container” in claim 35, such does not render the claim indefinite. Rather, the limitation that the container is configured to be placed next to another container in the carrier system merely renders claim 45 broad. Breadth, however, does not render a claim indefinite (MPEP 2143.04). The metes and bounds of claim 45 are clear: the claimed container is configured to be placed next to another container in the same carrier system that is engaged by legs of the carrier that forms a part of the container.

Claim 47 is rejected because “the first carrier” in line 1 lacks antecedent basis. Claims 48-49 were identified in the Office Action as including claim terms that likewise lack antecedent basis. Applicant respectfully traverses this rejection, as independent claim 46 recites “at least first and second carriers” which clearly provides antecedent basis for a later-recited “the first carrier”.

Claim 50 is rejected because the limitation “the surgical component extends into the channel” is said to be indefinite. Claim 50 has been amended to recite that the channel is configured for the surgical component to extend therein. Applicant asserts that “the channel” is positively limited by way of the amendment to claim 50.

Withdrawal of the claim rejections under 35 U.S.C. §112 is respectfully requested.

#### **IV. Claim Rejections under 35 U.S.C. §102**

A. Claims 35-45 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,561,805 (Kumar). Claims 35-36 and 43-45 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,382,575 (Frush). Claims 35-36 and 40-45 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,551,214 (Vincze). Claims 35 and 40-45 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,279,416

(Malec). Claims 35, 37-39, and 43-45 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 3,624,867 (Reynolds). Of the rejected claims, claim 35 is independent and will be discussed with respect to each of the cited references below.

Kumar is cited as disclosing a container 15 for retaining a surgical component, comprising a carrier 22 having a storage area 24 for retaining a surgical component, and legs (portions between elements 26) for engaging a carrier system, and a removable cover 31 attached to the storage area of the container. However, independent claim 35 recites a sterilization container. Applicant notes that the structure cited in the Office Action pertain to an implant assembly 15 that does not provide a sterilization container (see Col. 6, lines 51-54; Fig. 2). While Kumar discloses a sterile package 300 at, for example Fig. 11A (see also, e.g., Col. 10, line 61 -Col. 11, line 22; see alternative embodiments at Figs. 12-14), Kumar fails to teach or suggest a sterile package that includes a storage area configured to retain a surgical component such that the surgical component is in fluid communication with an ambient environment outside the carrier. For instance, Kumar discloses an enclosed package 300 (see Fig. 11A). Kumar further fails to teach or suggest legs extending downward from the storage area. Elements 26 are merely slots formed in the top of the healing cap 22 (identified in the Office Action as a “carrier”). The elements do not define legs as recited in claim 35. For at least these reasons, Kumar fails to teach or suggest each element of independent claim 35.

Frush is cited as disclosing a container 10 for retaining a surgical component, comprising a carrier 14 having a storage area 40 for retaining a surgical component, and legs (adjacent 34) for engaging a carrier system, and a removable cover 12 attached to the storage area of the container. However, independent claim 35 recites that the cover is removably attached to the storage area such that a portion of the surgical instrument is disposed between the cover and the storage area. Frush, on the contrary discloses that a surgical instrument is received in storage area 40 or 40' (see Col. 2, lines 47-52; Col. 3, lines 19-25). The storage area is defined by the holder 14 (or “carrier” as cited in the Office Action), and not between the holder 14 and the clip 12 (or “cover” as cited in the Office Action). Accordingly, Frush fails to teach or suggest each element of independent claim 35.

Vincze is cited as disclosing a container 290 for retaining a surgical component, comprising a carrier 300 having a storage area 310 for retaining a surgical component, and

legs (adjacent 312) for engaging a carrier system, and a removable cover 340 attached to the storage area of the container. Vincze discloses a cartridge 290 that receives ligating clips 2. The cartridge 290 includes a cartridge cover 300 that defines cavities 310, and openings 312 in communication with the cavities 310 (see Col. 3, lines 53-60; Figs. 1-2). A comb 140 has teeth 145 that are spaced apart so that they can be inserted into the cavities 310 (see Col. 4, lines 58-60; Fig. 1). A base 340 has members 343 that define grooves 344. When the base 340 is inserted in the cover 300, the ligating clips 2 are contained within the cavities 310 and the grooves 344 (see Col. 3, lines 62-66). This assembly of the cartridge 290 is thus achieved by indexing the comb 140 and cartridge cover 300 to receive a ligating clip 2 in each cavity 310. Next, the base is attached to the comb 140/cover 300 to complete the assembly of the cartridge 290 (see Col. 5, lines 6-11; Fig. 1). Because the comb 140 is inserted into the openings 312 and cavities 310, the ligating clips 2 do not extend through the cover 300. Thus, Vincze fails to teach or suggest the limitation of “wherein the storage area defines a hole that receives the surgical instrument such that the surgical instrument extends through the storage area” as recited in independent claim 35.

Malec is cited as disclosing a container 10 for retaining a surgical component, comprising a carrier 40 having a storage area 42 for retaining a surgical component, and legs (on either side of 60) for engaging a carrier system, and a removable cover 12 attached to the storage area of the container. Claim 35, however, recites that the storage area defines a hole that receives the surgical instrument such that the surgical instrument extends through the storage area. Malec at Fig. 13B illustrates the clip 20 as terminating at its lower end prior to extending through the storage area 42. Furthermore, claim 35 recites that the carrier further comprises legs extending downward from the storage area. Malec clearly shows at Figs. 1 and 7 that the structure identified in the Office Action as legs (on either side of 60) do not extend downward from the structure identified in the Office Action as a storage area 42. Accordingly, Malec fails to teach or suggest each element recited in independent claim 35.

Reynolds is cited as disclosing a container 40 for retaining a surgical component, comprising a carrier 20 having a storage area 24 for retaining a surgical component, and legs 26 for engaging a carrier system, and a removable cover 42 attached to the storage area of the container. Reynolds, however, discloses an assembly intended to depict the fastening together of two elements, one of which considered as a panel 14, board, sheet, or the like.

The panel 14 may be ornamental, as well as functional, such as the strips on exteriors of vehicles or office furniture of the like (see Col. 2, lines 59-72; Fig. 1). Thus, Reynolds does not disclose a sterilization container as recited in independent claim 35. Furthermore, the structure identified as a removable cover 42 is in fact a web of integral material joining the individual nuts together (see Col. 3, lines 4-7; Figs. 1-2). Accordingly, the web 42 does not provide a cover removably attached to the storage area of the carrier such that a portion of the surgical instrument is disposed between the cover and the upper surface of the storage area, as recited in independent claim 35. For at least these reasons, Reynolds fails to teach or suggest each limitation of claim 35.

Because each of the cited prior art references fails to teach or suggest all elements of independent claim 35, withdrawal of the rejection of claim 35 and corresponding dependent claims 36-37 and 39-45 under 35 U.S.C. §102 is respectfully requested.

B. Claims 46-50 and 52 are rejected under 35 U.S.C. §102 as being anticipated by Frush. Claims 46-50 and 52 are rejected under 35 U.S.C. §102 as being anticipated by Vincze. Claims 46-52 are rejected under 35 U.S.C. §102 as being anticipated by Reynolds. Of the rejected claims, claim 46 is independent and is discussed with respect to each of the cited references below.

Frush is cited as disclosing a carrier system comprising first and second rails (42, 44), first and second carriers (multiple elements 10) disposed along the rails, individual removable covers 12, the carriers configured to retain a surgical component. However, independent claim 46 recites that each of the first and second carriers includes a storage area that defines a hole extending therethrough, the holes configured to receive a surgical component. Claim 46 further recites that the removable covers are attached to the first and second carriers, respectively so as to cover the holes of the first and second carriers, respectively. The structure of Frush identified in the Office Action as a cover is in fact a clip part 12 that fits over a holder part 14. However, the cover does not cover the opening 40, which receives an instrument. Accordingly, Frush fails to teach or suggest each element of independent claim 46.

Vincze is cited as disclosing a carrier system comprising first and second rails (two portions of 30), first and second carriers (multiple elements 290) disposed along the rails, individual removable covers 340, the carriers configured to retain a surgical component. The structure identified in the Office Action as rails 30 in Vincze actually provides a track 30 along which ligating clips 2 travel into an inverting wheel 100 (see Col. 4, lines 1-13; Fig. 1). The structure identified in the Office Action as first and second carriers are in fact cartridges 290 (see Col. 1, lines 32-40; Fig. 1). Applicant could not find any disclosure within Vincze that discloses the cartridges 290 disposed along the track 30. For at least this reason, Vincze fails to teach or suggest each limitation recited in independent claim 46.

Reynolds is cited as disclosing a carrier system comprising first and second rails (opposed portions of 50 engaging under 22), first and second carriers 20 disposed along the rails, individual removable covers (portion of 42 atop an individual carrier 20), the carriers configured to retain a surgical component. However, independent claim 46 recites a sterilization carrier system, which Reynolds fails to teach or suggest, as discussed above with respect to independent claim 35. Furthermore, claim 46 recites that each of the first and second carriers includes a storage area that defines a hole extending therethrough, the holes configured to receive a surgical component. First and second removable covers are attached to the first and second carriers, respectively so as to cover the holes of the first and second carriers, respectively. The structure identified in the Office Action as first and second removable covers 42 is in fact a web that joins the individual nuts together (see Col. 4, lines 4-10; Fig. 2). The web 42 does not cover the holes of first and second carriers as recited in claim 46. Accordingly, Reynolds fails to teach or suggest each element of independent claim 46.

Because each of the cited prior art references fails to teach or suggest all elements of independent claim 46, withdrawal of the rejection of claim 46 and corresponding dependent claims 37-52 under 35 U.S.C. §102 is respectfully requested.

## **V. Conclusion**

Applicant therefore asserts that each objection and rejection to the claims has been overcome, and a notice of allowance is earnestly solicited. The Examiner is hereby

**DOCKET NO.:** SYNT-0271  
**Application No.:** 10/591,547  
**Office Action Dated:** May 5, 2009

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authorized to contact the undersigned at the telephone number appearing below if such would advance the prosecution of this application.

No fees are believed to be due for the filing of this correspondence. However, if any fees are deemed due, the Commissioner is hereby authorized to withdraw such fees from Deposit Account No. 23-3050.

Respectfully submitted,

Date: August 28, 2009

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